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15  
16 IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 POWERINE OIL COMPANY,  
22 CENCO REFINING COMPANY,  
and ENERGY MERCHANT  
23 CORPORATION,

24 Defendants.  
25  
26

Civil No: 04-6435 CBM (JWJx)

**FIRST AMENDED COMPLAINT**

27 The United States of America, by and through the undersigned attorneys, by  
28 authority of the Attorney General and acting at the request of the Administrator of  
the Environmental Protection Agency ("EPA"), files this First Amended  
Complaint and alleges as follows:

1           1.     This is a civil action under Section 107 of the Comprehensive  
2 Environmental Response, Compensation, and Liability Act of 1980, as amended  
3 ("CERCLA"), 42 U.S.C. § 9607, relating to the releases and threatened releases of  
4 hazardous substances at the following Sites: the Waste Disposal, Inc. Site ("WDI  
5 Site") located at 12731 Los Nietos Rd., Santa Fe Springs, California; the  
6 Operating Industries, Inc. Superfund Site ("the OII Site"), located at 900 Potrero  
7 Grande Drive, Monterey Park, California; and the Casmalia Resources Superfund  
8 Site ("the Casmalia Site"), located at NTURd-539 San Ysidro Blvd., Casmalia,  
9 California.

10           2.     The United States in its complaint seeks reimbursement of certain  
11 costs incurred and to be incurred by the Environmental Protection Agency  
12 ("EPA") and the Department of Justice from Powerine Oil Company ("Powerine")  
13 and CENCO Refining Company ("CENCO") for response actions at the WDI Site  
14 and the OII Site, together with the accrued interest thereon, and seeks  
15 reimbursement of certain costs incurred and to be incurred by the Environmental  
16 Protection Agency ("EPA") and the Department of Justice from Powerine at the  
17 the Casmalia Site, together with the accrued interest thereon.

18           3.     This is also a civil action under Section 104(e) of CERCLA, 42  
19 U.S.C. § 9604(e) for civil penalties for Powerine's failure to timely respond to  
20 information requests submitted to it pursuant to Section 104(e) of CERCLA  
21 related to the WDI Site, and for injunctive relief and civil penalties, pursuant to  
22 Section 104(e)(5)(B)(ii), 42 U.S.C. § 9604(e)(5)(B)(ii), based upon Energy  
23 Merchant Corporation's ("EMC") failure to timely respond to EPA's request  
24 submitted to it pursuant to Section 104(e) of CERCLA related to the WDI Site.

25           4.     This is also a civil action under the Federal Debt Collection  
26 Procedures Act ("FDCPA"), 28 U.S.C. §§ 3001-3308, seeking to set aside, as  
27 fraudulent, a payment made by Powerine to EMC.

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1 Site under a disposal permit, and may have operated for two to three years after  
2 1964.

3 11. Chemicals of concern discovered at the Site include, among others,  
4 benzene, toluene, ethylbenzene, xylene, arsenic, chromium, copper and lead in  
5 soil, and chloroform, trichloroethane, tetrachloroethene, benzene, methane,  
6 trichloroethene, and vinyl chloride in soil gas. In addition, liquids in the reservoir  
7 contain benzene, toluene, ethylbenzene, vinyl chloride, polychlorinated biphenyls,  
8 arsenic, chromium, and lead. All of these substances are "hazardous substances"  
9 as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10 12. In June 1986, EPA proposed the Site for listing on the National  
11 Priorities List ("NPL"). The WDI Site was listed on the NPL on July 22, 1987.

12 13. Powerine contracted, agreed, or otherwise arranged for disposal or  
13 treatment or arranged with a transporter for transport for disposal or treatment of  
14 refinery wastes and other materials containing hazardous substances, including  
15 among other things, tank bottoms, and API separator sludge, at the WDI Site.

16 14. On September 8, 1987, EPA sent a general notice letter to Powerine  
17 indicating that it may be a potentially responsible party ("PRP") at the WDI Site.  
18 The September 8, 1987, letter also included a request that Powerine provide  
19 information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). On  
20 March 31, 1994, EPA issued a Special Notice letter, pursuant to Section 122(e) of  
21 CERCLA, 42 U.S.C. § 9622(e), to Powerine for the WDI Site.

22 15. In 1988 and 1989, EPA studied the WDI Site as part of a remedial  
23 investigation ("RI") study to determine the nature and extent of contamination at  
24 the Site and to identify possible long-term cleanup actions. Late in 1993, the EPA  
25 selected a remedy to address soils and subsurface gas at the site. This remedy  
26 consisted of building a hazardous waste cap, with gas extraction and treatment, if  
27 necessary.

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16. After the 1993 record of decision ("ROD") was signed and the design of the remedy was underway, new information about the extent of contamination at the site became available. Between 1997 and 2001, the EPA and the Waste Disposal, Inc. Group ("WDIG"), a group of 17 generator PRPs, conducted further investigations at the WDI Site to learn more about the amount and types of waste buried there.

17. The WDIG completed a Remedial Design Investigative Activities Summary Report in May 2001. The report highlighted the key findings of the recently completed and past investigations conducted at the site. Using the information from investigations performed at the site, a Supplemental Feasibility Study ("SFS") was then prepared in May 2001 which evaluated a variety of cleanup options for the site. Based on the results of the SFS, EPA developed a preferred alternative for cleanup of the site. On June 14, 2002, EPA issued an Amended Record of Decision for the WDI Site. The WDIG proceeded to implement the new remedy. In September 2006, EPA determined that the remedial action was complete.

## The Oil Site

18. The OII site is a 190-acre "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site is located at 900 Potrero Grande Drive, Monterey Park, California. The facility operated from approximately 1948 through 1984, and, over the course of the facility's operation, industrial wastes and municipal trash were disposed of at the OII Site. Wastes accepted at the Site for disposal included "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. There have been "releases" of hazardous substances from the OII Site, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and the Site poses numerous threats to human health and the environment.

### The Casmalia Site

20. The Casmalia Site is a commercial hazardous waste treatment, storage and disposal facility, which accepted hazardous waste and disposed of hazardous waste at the Site from approximately 1973 to 1989. The Site covers approximately 252 acres.

21. The Casmalia Site consists, in part, of 58 surface impoundments, two waste treatment systems, and hazardous waste landfills containing polychlorinated biphenyls ("PCB's"), solvents, pesticides, metals, caustics and acids. During its approximately 16 years of operation between 1973 and 1989, the Casmalia Site accepted and disposed of or treated and disposed of in excess of 5 billion pounds of liquid and solid hazardous waste.

22. The Casmalia Site was contaminated extensively by its operations. In addition to soil contamination, the Site includes groundwater contaminated with, among other contaminants, nickel and other heavy metals, and a number of volatile organic compounds, such as TCE, 1,1,1-trichloroethane, and 1,1-dichloroethane.

23. Since the owner and operators had ceased active management of the Casmalia Site, the Site's condition had deteriorated to the point where it was in need of certain immediate response actions to maintain control of the environmental problems at the Site. In response to unstable and deteriorating conditions at the Site, in 1992 EPA initiated a removal action pursuant to CERCLA Section 104, 42 U.S.C. § 9604, to implement certain interim stabilization actions, prevent further deterioration of site conditions, and control the most immediate threats.

24. Site investigation and other CERCLA response work continues at the Casmalia Site, under the direction of both EPA and the Casmalia Steering Committee, a group of major waste generators at the Site.

1 EPA Requests for Information from Powerine under Section 104(e) of CERCLA  
2 for the WDI and OII Sites  
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4 25. On February 12, 1999, EPA Region 9 issued an information request  
5 ("Information Request") to Powerine, pursuant to Section 104(e) of CERCLA, 42  
6 U.S.C. § 9604(e), seeking to obtain information from Powerine concerning its  
7 ability to pay for or to perform cleanup at the WDI Site and OII Site.

8 26. A response to the February 12, 1999, Information Request was due  
9 within thirty (30) days of receipt. EPA granted an extension of time for Powerine  
10 to respond until April 13, 1999.

11 27. On April 13, 1999, Powerine faxed a letter to EPA stating that EPA  
12 should look to CENCO regarding its environmental liabilities. Powerine's letter  
13 failed to provide EPA with the information asked for in its Information Request.

14 28. On July 14, 1999, EPA sent a follow-up 104(e) Information Request  
15 to Powerine, requesting a response to the Information Request dated February 12,  
16 1999.

17 29. Powerine responded to EPA's Information Request on August 25,  
18 1999. The August 25, 1999, response was incomplete.

19 30. On December 13, 1999, EPA sent another 104(e) Information  
20 Request to Powerine requesting responses to questions left unanswered in the  
21 previous response, as well as additional questions concerning Powerine's financial  
22 ability to pay.

23 31. Powerine responded to EPA by letter on January 13, 2000, declining  
24 to respond to EPA's December 13, 1999, Information Request under Section  
25 104(e) of CERCLA.  
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32. On February 14, 2000, EPA again wrote to Powerline and requested an immediate response to its Information Requests dated December 13, 1999, and February 12, 1999.

4 33. Powerine failed to respond to EPA's December 13, 1999, Information  
5 Request until April 7, 2000, more than 3 months late. Powerine also failed to  
6 respond completely to EPA's February 12, 1999, Information Request until April  
7 7, 2000, almost 13 months late.

EPA Requests for Information from EMC under Section 104(e) of CERCLA  
related to the WDI and OII Sites

34. On December 13, 1999, EPA sent a CERCLA Section 104(e) Information Request to EMC, requesting information about EMC's disposition of proceeds from Powerine's asset sale to CENCO, in order to ascertain Powerine's ability to pay for cleanup activities at the WDI Site and the OII Site.

16 35. EMC's response was due to EPA on January 17, 2000. EMC did not  
17 respond.

36. EPA sent a follow-up 104(e) Information Request to EMC on February 14, 2000, outlining the legal ramifications of EMC's failure to respond and encouraging an immediate response.

21 37. On December 14, 2000, EPA sent another 104(e) Information  
22 Request to EMC, recounting the previous Information Requests that remained  
23 unanswered.

24 38. On December 31, 2000, EMC responded to EPA's Information  
25 Requests. However, that response was incomplete. Most importantly, the  
26 response failed to address the request that EMC explain how proceeds from the



1 sale of the Powerine refinery assets were disbursed to EMC and to any EMC-  
2 related entities.

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4 Fraudulent Conveyance - Federal Debt Collection Procedures Act  
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6 39. Powerine sold its refinery and related assets to CENCO in August  
7 1998 for \$14.7 million and transferred the proceeds from this sale to EMC on  
8 August 6, 1998. A portion of this transfer, \$2.2 million, was used to pay the  
9 balance on a loan, while the remaining \$12.5 million constituted a "dividend."

10 40. Powerine did not receive any new consideration from EMC in  
11 exchange for the \$12.5 million dividend payment.

12 41. The money transferred to EMC constituted substantially all of  
13 Powerine's assets.

14 42. Powerine transferred its assets to EMC in the midst of negotiations  
15 with EPA over the debt it had incurred and was continuing to incur at the WDI and  
16 OII Superfund Sites.

17 43. Powerine's transfer to EMC rendered Powerine insolvent and unable  
18 to pay its debts to the United States.

19 44. Powerine concealed the transfer from EPA for over a year following  
20 the distribution of the dividend.  
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22 COUNT ONE - CERCLA LIABILITY AT WDI SITE  
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24 45. The allegations set forth in paragraphs 10 through 17 above are  
25 realleged and incorporated herein by reference.  
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1       46.   There were, and are, releases and threatened releases, within the  
2 meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous  
3 substances at or from the WDI Site.

4       47.   The WDI Site is a "facility" within the meaning of Section 101(9) of  
5 CERCLA, 42 U.S.C. § 9601(9).

6       48.   The United States began incurring costs in 1986 and has incurred at  
7 least \$16,000,000 in unreimbursed response costs (including interest) to respond  
8 to the releases or threatened releases of hazardous substances at the Site. Such  
9 costs were not inconsistent with the National Contingency Plan.

10      49.   Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in  
11 pertinent part:

12               (3) any person who by contract, agreement, or otherwise  
13 arranged for disposal or treatment, or arranged with a transporter for  
14 transport for disposal or treatment, of hazardous substances owned or  
possessed by such person, by any other party or entity and containing  
such hazardous substances . . . shall be liable for—

15                       (A) all costs of removal or remedial  
16 action incurred by the United States  
17 Government or a State not inconsistent with  
the national contingency  
plan. . . .

18      50.   Defendant Powerine is a "person" within the meaning of 42 U.S.C.  
19 § 9601(21) and is liable under Section 107(a)(3) of CERCLA, 42 U.S.C.  
20 § 9607(a)(3), as a person who arranged for the disposal or treatment of hazardous  
21 substances or who arranged for transport for disposal or treatment of such  
22 substances at the WDI Site.

23      51.   Defendant Powerine is jointly and severally liable to the United States  
24 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered  
25 response costs incurred, and to be incurred, by the United States in connection  
26 with the WDI Site.  
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1        52. Defendant CENCO is a "person" within the meaning of 42 U.S.C. §  
2 9601(21) and is liable as the successor of Powerine, pursuant to an express  
3 assumption of Powerine's liability by CENCO for, among other things, CERCLA  
4 claims for the WDI Site.

5        53. Defendant CENCO is jointly and severally liable to the United States  
6 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered  
7 response costs incurred, and to be incurred, by the United States in connection  
8 with the WDI Site.

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10                    COUNT TWO - CERCLA LIABILITY AT THE OII SITE  
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12        54. The allegations set forth in paragraphs 18 and 19 above are realleged  
13 and incorporated herein by reference.

14        55. There were, and are, releases and threatened releases, within the  
15 meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous  
16 substances at or from the OII Site.

17        56. The OII Site is a "facility" within the meaning of Section 101(9) of  
18 CERCLA, 42 U.S.C. § 9601(9).

19        57. The United States has incurred unreimbursed response costs  
20 (including interest) to respond to the releases or threatened releases of hazardous  
21 substances at the OII Site. Such costs were not inconsistent with the National  
22 Contingency Plan.

23        58. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in  
24 pertinent part:

25                    (3) any person who by contract, agreement, or otherwise  
26 arranged for disposal or treatment, or arranged with a transporter for  
27 transport for disposal or treatment, of hazardous substances owned or  
28 possessed by such person, by any other party or entity and containing  
such hazardous substances . . . shall be liable for—

1 (A) all costs of removal or remedial  
2 action incurred by the United States  
3 Government or a State not inconsistent with  
4 the national contingency  
5 plan. . . .

6 59. Defendant Powerine is a "person" within the meaning of 42 U.S.C.  
7 § 9601(21) and is liable under Section 107(a)(3) of CERCLA, 42 U.S.C.  
8 § 9607(a)(3), as a person who arranged for the disposal or treatment of hazardous  
9 substances or who arranged for transport for disposal or treatment of such  
10 substances at the OII Site.

11 60. Defendant Powerine is jointly and severally liable to the United States  
12 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered  
13 response costs incurred, and to be incurred, by the United States in connection  
14 with the OII Site.

15 61. Defendant CENCO is a "person" within the meaning of 42 U.S.C. §  
16 9601(21) and is liable as the successor of Powerine, pursuant to an express  
17 assumption of Powerine's liability by CENCO for, among other things, CERCLA  
18 claims for the OII Site.

19 62. Defendant CENCO is jointly and severally liable to the United States  
20 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered  
21 response costs incurred, and to be incurred, by the United States in connection  
22 with the OII Site.

23 COUNT THREE - CERCLA LIABILITY AT THE CASMALIA SITE

24 63. The allegations set forth in paragraphs 20 through 24 above are  
25 realleged and incorporated herein by reference.  
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1        64. There were, and are, releases and threatened releases, within the  
2 meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), of hazardous  
3 substances at or from the Casmalia Site.

4        65. The Casmalia Site is a "facility" within the meaning of Section 101(9)  
5 of CERCLA, 42 U.S.C. § 9601(9).

6        66. The United States has incurred unreimbursed response costs  
7 (including interest) to respond to the releases or threatened releases of hazardous  
8 substances at the Casmalia Site. Such costs were not inconsistent with the  
9 National Contingency Plan.

10       67. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in  
11 pertinent part:

12                (3) any person who by contract, agreement, or otherwise  
13 arranged for disposal or treatment, or arranged with a transporter for  
14 transport for disposal or treatment, of hazardous substances owned or  
possessed by such person, by any other party or entity and containing  
such hazardous substances . . . shall be liable for—

15                                (A) all costs of removal or remedial  
16 action incurred by the United States  
17 Government or a State not inconsistent with  
the national contingency  
plan. . . .

18        68. Defendant Powerine is a "person" within the meaning of 42 U.S.C.  
19 § 9601(21) and is liable under Section 107(a)(3) of CERCLA, 42 U.S.C.  
20 § 9607(a)(3), as a person who arranged for the disposal or treatment of hazardous  
21 substances or who arranged for transport for disposal or treatment of such  
22 substances at the Casmalia Site.

23        69. Defendant Powerine is jointly and severally liable to the United States  
24 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered  
25 response costs incurred, and to be incurred, by the United States in connection  
26 with the Casmalia Site.  
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1 COUNT FOUR - POWERINE's AND EMC's LIABILITY FOR LATE OR  
2 DEFICIENT RESPONSES TO EPA REQUESTS FOR INFORMATION

3 70. The allegations set forth in paragraphs 25 through 33 above are  
4 realleged and incorporated herein by reference.

5 71. This is a civil claim brought against Powerine pursuant to Section  
6 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604 (e)(5)(B), for penalties based on  
7 Powerine's failure to timely comply with an information request submitted to it  
8 pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

9 72. The access to information requirements contained in Section  
10 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), state that:

11 [EPA] may require any person who has or may have information relevant to  
12 any of the following to furnish, upon reasonable notice, information or  
documents relating to such matter:

- 13 (A) The identification, nature, and quantity of materials which have  
14 been or are generated, treated, stored, or disposed of at a vessel  
or facility or transported to a vessel or facility.
- 15 (B) The nature or extent of a release or threatened release of a  
16 hazardous substance or pollutant or contaminant at or from a  
vessel or facility.
- 17 (C) Information relating to the ability of a person to pay for or to  
18 perform a cleanup. . . .

19 73. Pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5),  
20 when any person fails to provide information requested by EPA pursuant to  
21 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), EPA may commence a civil  
22 action to obtain an order to require that the requested information be provided and  
23 assess and recover a civil penalty. 42 U.S.C. § 9604(e)(5).

24 74. Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), authorizes the  
25 Attorney General to commence a civil action to assess and recover a civil penalty  
26 against "any person who unreasonably fails to comply with the provisions of  
27 paragraph [104(e)](2). . . ."  
28

1        75. Powerine failed to timely comply with the requirements of Section  
2 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), as described above, in that  
3 Powerine unreasonably failed to timely provide the information requested by  
4 EPA's February 12, 1999, and December 13, 1999, Information Requests.

5        76. Powerine's failure to timely provide the information violates Section  
6 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), and, pursuant to Section  
7 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), subjects Powerine to a civil  
8 penalty not to exceed \$27,500 per day for each violation, pursuant to Section  
9 104(e)(5)(B) of the Act, as amended by Pub. L. 104-134 and 61 Fed. Reg. 69360.

10       77. The allegations set forth in paragraphs 34 through 38 above are  
11 realleged and incorporated herein by reference.

12       78. This is a civil claim brought against EMC pursuant to Section  
13 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604 (e)(5)(B), for penalties and injunctive  
14 relief based on EMC's failure to timely comply with an Information Request  
15 submitted to it pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

16       79. EMC failed to comply with the requirements of Section 104(e)(2) of  
17 CERCLA, 42 U.S.C. § 9604(e)(2), as described above, in that EMC unreasonably  
18 failed to timely provide information requested by EPA's December 13, 1999, and  
19 December 14, 2000, Information Requests.

20       80. EMC's failure to timely provide the information violates Section  
21 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), and, pursuant to Section  
22 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), subjects EMC to a civil  
23 penalty not to exceed \$27,500 per day for each violation, pursuant to Section  
24 104(e)(5)(B) of the Act, as amended by Pub. L. 104-134 and 61 Fed. Reg. 69360  
25 through March 15, 2004, and a civil penalty not to exceed \$32,500 per day for  
26 each violation after March 15, 2004, pursuant to Section 104(e)(5)(B) of the Act,  
27 as amended by Pub. L. 104-134 and 69 Fed. Reg. 7121.

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2 COUNT FIVE - FRAUDULENT CONVEYANCE UNDER THE  
3 FEDERAL DEBT COLLECTION PROCEDURES ACT

4 81. The allegations set forth in paragraphs 39 through 44 are realleged  
5 and incorporated herein by reference.

6 82. The Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C.  
7 §§ 3001-3308, authorizes the United States to bring a fraudulent conveyance  
8 action to avoid transfers that are fraudulent as to a debt owed to the United States.  
9 28 U.S.C. § 3306.

10 83. A transfer is fraudulent as to a debt owed to the United States if the  
11 debt arises before the transfer is made, the debtor makes the transfer without  
12 receiving reasonably equivalent value in exchange for the transfer, and the debtor  
13 either is insolvent or becomes insolvent as a result of the transfer. 28 U.S.C.  
14 § 3304(a).

15 84. The transfer of assets from Powerine to EMC constitutes a fraudulent  
16 conveyance under the FDCPA. The transfer occurred after Powerine incurred its  
17 debts to the United States, including but not limited to the debts arising from  
18 Powerine's liability at the WDI and OII Sites. Powerine began incurring the debt  
19 for OII in 1984 and for WDI in 1986, and was continuing to incur debt at the time  
20 of the transfer. Powerine did not receive reasonably equivalent value because it  
21 received nothing from EMC in exchange for the \$12.5 million dividend payment.  
22 The transfer rendered Powerine insolvent.

23 85. A transfer is also fraudulent if the debtor makes the transfer with  
24 actual intent to hinder, delay, or defraud a creditor, regardless of whether the debt  
25 arises before or after the transfer is made. 28 U.S.C. § 3304(b). In determining  
26 actual intent, consideration may be given to the following factors: whether the  
27 transfer was made to an insider; whether the transfer was concealed; whether the  
28 debtor had been sued or threatened with suit before the transfer was made;



1 whether the value of the consideration received by the debtor was reasonably  
2 equivalent to the value of the asset transferred; whether the transfer was of  
3 substantially all the debtor's assets; whether the debtor was insolvent or became  
4 insolvent as result of the transfer; and whether the transfer occurred shortly before  
5 or shortly after a substantial debt was incurred. 28 U.S.C. § 3304(2).

6       86. The transfer of assets from Powerine to EMC constitutes a fraudulent  
7 conveyance under the FDCPA because it was made with actual intent to hinder,  
8 delay, or defraud a creditor.

- 9           a. The transfer made by Powerine was to an insider. EMC was  
10           Powerine's sole shareholder and, therefore, was in control of  
11           Powerine.
- 12           b. Powerine concealed the transfer from EPA for over a year  
13           following the distribution of the dividend to EMC.
- 14           c. Powerine had been sued by the United States and was  
15           threatened with additional lawsuits when the transfer occurred.
- 16           d. The transfer constituted substantially all of Powerine's assets.
- 17           e. Powerine removed its assets by transferring them to EMC.
- 18           f. Powerine did not receive any new consideration from EMC in  
19           exchange for its \$12.5 million dividend payment.
- 20           g. Powerine was insolvent or became insolvent shortly after the  
21           transfer was made.
- 22           h. The transfer occurred shortly after Powerine began incurring its  
23           debts to the United States and while it was still incurring debts  
24           to the United States.

25       87. The transfer of assets from Powerine to EMC constitutes a fraudulent  
26 conveyance and, therefore, should be voided so that the funds may be used to  
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1 satisfy Powerine's debts to the United States, including but not limited to the debts  
2 arising from the WDI Site.

3 PRAYER FOR RELIEF

4 WHEREFORE, the United States of America respectfully requests  
5 judgment:

6 1. Against Powerine, jointly and severally, a judgment for all  
7 unpaid costs incurred by the United States relating to the WDI Site, the OII Site,  
8 and the Casmalia Site, plus interest;

9 2. Against CENCO, jointly and severally, a judgment for all  
10 unpaid costs incurred by the United States relating to the WDI and OII Site, plus  
11 interest;

12 3. A declaratory judgment against Powerine and CENCO,  
13 pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as to liability  
14 for response costs or damages that will be binding on any subsequent action or  
15 actions to recover further response costs or damages incurred by EPA at the WDI  
16 Site; the OII Site; and the Casmalia Site.

17 4. Against Powerine and EMC, for penalties for failure to timely  
18 respond to EPA's Information requests issued pursuant to Section 104(e) of  
19 CERCLA with respect to the WDI Site;

20 5. Voiding the transfer of assets by Powerine to EMC, and  
21 ordering that the dividend payment be returned to Powerine, to the extent  
22 necessary to satisfy Powerine's liabilities to the United States; and

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1                   6.     Granting such other relief as the Court deems appropriate.

2 Dated: ~~October~~ <sup>2</sup> 2007.

3 ~~17~~ Nov.

FOR THE UNITED STATES OF AMERICA

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